

### **REMARKS/ARGUMENTS**

In response to the Advisory Action mailed on August 13, 2004, Applicants have filed a Request for Continuing Examination, including the attached amendment and accompanying remarks, and a Two-Month Extension of Time.

Claim 15 has been amended to clarify the nature of the claimed semiconductor device and not in response to overcoming any of the cited references.

In the Advisory Action of August 13, the Examiner argues that "Izuha et al, on col. 11, lines 35-41 and col. 13, lines 14-20 clearly state that 'The polycrystalline film was columnar grains A of which the sizes of the dielectric film 5 and the upper electrodes 6 were the same in the direction of the substrate surface corresponding to the size of the crystal grains of the lower electrode 4 and the crystal orientation thereof were the same.'" The Examiner concludes that, "since these grain sizes and crystal orientation are all the same, it is very clear to one of ordinary skill in the art that Izuha et al teaches a substantially uniform grain diameter in the dielectric film."

The reasons for maintaining the rejection of claims 15-19 in the Advisory Action are respectfully traversed.

It is deemed that the usage of the plural form of "grains A" in Izuha et al, referenced above, merely means that there are plural columnar crystal grains in the dielectric film 5.

It is further deemed that the usage of the plural form of "sizes" in Izuha et al, referenced above, merely means that the lateral size of the crystal grain in the dielectric film and the lateral size of a corresponding crystal grain in the upper electrode are the same.

It is important to note that the teachings of Izuha et al in column 11 and column 13 is that the sizes (i.e. more than one size) of the columnar grains were the same in the lower electrode 4, the dielectric thin film 5, and the upper electrode 6, but not that those sizes were all “substantially uniform” as claimed. Applicants maintain that there are no explicit teachings in Izuha et al that all of the columnar grains have the same size measured across the entirety of the film.

Applicants continue to assert that the teachings of Izuha et al teach the following structure shown below in which the columnar grain structure is the same in layers 4, 5, and 6, but that the exact dimensions d1, d2, and d3 of the columnar grains can vary and are not taught to be “substantially uniform” as claimed.

c	c	c
b	b	b
a	a	a

|→ d1← |→ d2 ← |→ d3← |

#### Case Law

Conceptual drawings cannot be relied upon for exact measurements unless there is specific support for doing so in the specification. Applicants contend that there are no words to the effect that d1=d2=d3, or that such dimensions are “substantially uniform” in Izuha et al.

This rule is set forth in *Hockerson-Halberstadt v. Avia Group International*, 222 F.3d at 956 (Fed. Cir. 2000), citing *In re Wright*, 569 F.2d at 1127 (CCPA 1977):

Under out precedent, however, it is well established that patent drawings do not define the precise proportions of the elements and may not be relied on to show particular sizes if the specification is completely silent on the issue. See *In re Wright*, 569 F.2d 1124, 1127, 193 USPQ 332, 335 (CCPA 1977) ("Absent any written description in the specification of quantitative values, arguments based on measurement of a drawing are of little value."); *In re Olson*, 41 CCPA 871, 212 F.2d 590, 592, 101 USPQ 401, 402 (CCPA 1954); cf. *Manual of Patent Examining Procedure* 2125 (1998).

Conclusion

For the reasons given above, all pending claims 12 and 15-19 are now believed to be in form for allowance and such action is respectfully requested.

Should the Examiner be of the opinion that a telephone conference would expedite the prosecution of this case, the Examiner is requested to contact Applicants' attorney at the telephone number listed below.

Enclosed is a check to cover the Request for Continued Examination fee of \$770 and Two-Month Extension of Time fee of \$420. No additional fee is believed due for this submittal. However, any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

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Respectfully submitted,

  
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